Sample Case #2: DPAHC

Instructions: Please read the case and without reviewing the accompanying assessment, try to determine how well the consultant addressed the four key elements that are essential and must be documented for a quality ethics consultation. Also, challenge yourself to identify (list) how the consultation could be improved before you review the accompanying evaluation.

The patient's provider requested an ethics consultation for help in deciding if the team should follow care decisions made by a health care agent that were inconsistent with the patient's advance directive. The facts are as follows: During a palliative care consult regarding care options for the patient who was admitted to the hospital from a nursing home due to complications of his end-stage multiple sclerosis (MS) it was discovered there is an advance directive from several years ago that is in conflict with wife's wishes and current plan for full code status. According to staff that visits the patient regularly, the patient has had no visitors at the nursing home for a couple of years; according to the wife, she visits more than once a week. The wife, when asked to visit the patient during this admission, declined, saying she had too many doctor appointments. Some staff feel that it is wrong that the patient is getting aggressive treatment and doesn't have a Do Not Resuscitate (DNR) order, and believes the wife is keeping him alive so that she can get his benefits for as long as possible.

Ethics question: Given the conflict between the patient's health care agent (wife appointed through a durable power of attorney for health care [DPAHC]) (value of autonomy), who wants the patient to remain on full code status, and the patient's health care team who thinks life-sustaining treatment should be discontinued as it will not be effective in improving the patient's quality of life (value of non-maleficence, do no harm), what is the appropriate course of action for the health care team to take?

The ethics consultation team reviewed the health record (including the advance directive), visited the patient, and spoke to the team and the DPAHC. We also reviewed the hospital policies on selecting decision makers, advance directives and management of DNR orders.

Medical facts: Patient is 55 y/o man with end stage MS. He was admitted to the hospital with ascending cholangitis, an infection in the biliary system which was caused by gall stones blocking the bile duct. The patient was treated with antibiotics, as well as an endoscopic procedure to drain that fluid, remove the stone and place a stent in the duct to keep it open. While the medical team is not using the term "futility of care," what they are saying is that artificially keeping this patient alive is not enhancing his quality of life.

Patient's preferences & interests: Several years ago the patient completed and signed an Advance Directive: Living Will and Durable Power of Attorney for Health Care. In this document he stated clearly the following: "no dialysis, no artificial nutrition or hydration and no mechanical breathing." He also agreed at that time for his wife to serve as his health care agent. Then a couple of years ago (more recently) he signed another Durable Power of Attorney naming his wife as his health care agent. By policy this clearly makes his wife as his surrogate decision-maker. Interestingly, there are later notes from the home care social worker that indicate the patient wants his decisions made by his wife.

Other parties' preferences & interests: The health care agent was clear that she wanted all means to keep the patient alive and said that her husband appointed her as his spokesperson through the durable power of attorney document a couple of years ago and in a prior document signed a couple of years before that. While the wife was correct that the advance directive appoints her, the document itself states that he did not want any mechanical means used to keep him alive

Ethics knowledge: According to policy the wife is the duly appointed health care agent.

Ethical analysis: This case was difficult due to their being ethical claims and counterclaims. The medical team was looking at the advance directive where the patient stated that he did not want any mechanical means to keep him alive. The counterclaim was apparent after talking with the wife/health care agent, and the social worker that had worked with this patient and family in home based extended care for many years that the patient wanted his wife to make all decisions pertaining to his care. Withdrawing mechanical means of life support is not ethically justifiable because the surrogate has the right to make this decision.

The health care agent is the ethically appropriate decision maker because she was appointed by the patient.

One of the options we examined was to overrule the health care agent and this was deemed too drastic a measure as the hospital has been following her decisions for many years. Also the long-term care facility where the patient lives said that to overrule the health care agent would require legal action. The actions to keep him on mechanical means of support have taken place with the awareness of the health care agent, and presumably with the awareness of the patient himself during a time when he did have some ability to understand and comprehend. Now that the patient no longer has the ability to make his decisions, his health care agent is his spokesperson for health care decisions.

Recommendations/Plans: At this time the ethics committee sees the best course of action to continue to dialogue regularly with the health care agent. This may be best done by the social worker that has been involved with this patient and his family for many years and the home-based extended care nurse who visit the patient at the long-term care facility. It is of utmost importance to have continued documentation of these conversations. Resources available on the web for managing challenging relationship were provided to staff.

Justification for Assessment

This case does not address the Key Elements well.

Ethics Question:

Positive features:

- Identified that the values uncertainty or conflict was between the patient's surrogate decision maker and the health care team

Could be improved:

- Clarifying if the decision or action in question relates to removal of life sustaining treatment (and if so which one) or code status, or both

Consultation Specific Information:

Positive features:

- Clearly defined reason for patient's hospitalization (acute infection treated with antibiotics and stent), as well as his chronic disease diagnosis
- Care team has access to and references patient's advance directive

Could be improved:

- Patient decision making capacity never explicitly characterized

  (Because MS usually does not cause global cognitive problems, providing the basis for inferring decisional incapacity should be addressed. Also, is current decision making capability chronic or possibly reversible due to the patient's acute infection?)

- More sufficiently addressing the chronology and details related to the initial advance directive and DPAHC, the subsequent DPAHC, and the home based social work notes related to the patient's preference to have his wife make decisions Was this latter meant to be as the health care agent (wife) saw fit, or as constrained by the advance directive? It may have been necessary to contact the social worker to clarify, but it is possible that these facts would have clarified whether or not the wife was actually acting in a way that was inconsistent with his preferences.
- More fully specifying relevant policy information rather than making general reference to policy

  (If using policies to strengthen the ethical analysis, specific wording in quotes from the policy and explicit descriptions of relevant ethical principles described in an authoritative document provide support for an argument.)

- Providing information about the patient's short-term prognosis; i.e., the likelihood that the patient will survive to discharge back to the long term care setting
- Providing more information about the situation when mechanical means of support were provided in the nursing home, including the patient's level of involvement and the specific treatment(s)

Ethical Analysis:

Positive features:

- Identified an important claim (advance directive information) and counterclaim (patient wanted wife to make decisions)

Could be improved:

- Explaining the facility's policy on appropriate decision makers would have made it clear why the wife was the appropriate decision maker
- Describing the basis for surrogate decision-making (i.e., substituted judgment if available or best interests)
- Explaining to the care team how the living will on file may or may not have been rescinded by the patient when he stated that he wanted his wife to make decisions for him and when he seemingly consented in the nursing home to use mechanical life support (which was contrary to the preferences noted in his living will). This situation provides an opportunity to remind all parties that advance directive preferences are intended for when a patient no longer has capacity, so his wishes for when he had capacity do not necessarily undermine those expressed in an advance directive.
- Using the central ethics question(i.e., should the team follow the care decisions made by a health care agent that seem inconsistent with the patient's advance directive) as an opportunity to discuss circumstances when it is ethically justifiable NOT to follow the health care decisions made by a health care agent. If there was clear evidence that the decision of the health care agent was inconsistent with the patient's known wishes or the patient's best interests, then the healthcare team could challenge the surrogate. In this case there is evidence that the patient wanted mechanical means of support previously when he still had decision-making capacity.

Conclusions and/or Recommendations:

Positive features:

- Concluding that the wife should make healthcare decisions for the patient (based on historical precedents and assuming the patient lacks decision-making capacity)
- Recommending healthcare workers familiar with the patient and his care continue to work through the situation, thus ensuring continuity of care based on relationships that are already established
- Encouraging documentation in the medical record

Could be improved:

- Directly answering the requester's concerns and explaining that the advance directive does not necessarily reflect what the patient would want under his current circumstances
- Reiterating the role of the decision maker: reminding the wife of her duties as a surrogate, that is, to act according to the patient's known wishes or what is in his best interest at the time in which treatment and procedures are needed and offered
- Providing more details about the statement, "continue to dialogue regularly with the health care agent"
- Eliminating the recommendation of providing materials to staff for managing challenging relationships

  (The recommendation seems unrelated to the consultation because there was no explicit discussion of the staff's moral, professional or emotional distress.)